

**HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS**

**BILL #:** HB 1487

Spring Lake Improvement District, Highlands County

**SPONSOR(S):** Grimsley

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 2756

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|    | <b>REFERENCE</b>   | <b>ACTION</b> | <b>ANALYST</b> | <b>STAFF DIRECTOR</b> |
|----|--|---------------|----------------|-----------------------|
| 1) | <u>Military &amp; Local Affairs Policy Committee</u>               | <u></u>       | <u>Fudge</u>   | <u>Hoagland</u>       |
| 2) | <u>Finance &amp; Tax Council</u>                                   | <u></u>       | <u></u>        | <u></u>               |
| 3) | <u>Economic Development &amp; Community Affairs Policy Council</u> | <u></u>       | <u></u>        | <u></u>               |
| 4) | <u></u>  | <u></u>       | <u></u>        | <u></u>               |
| 5) | <u></u>  | <u></u>       | <u></u>        | <u></u>               |

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**SUMMARY ANALYSIS**

Spring Lake Improvement District (district) is an independent water control district located in Highlands County. The district was created in 1971 pursuant to ch. 71-669, L.O.F.

The bill amends and repeals the district charter to remove obsolete and redundant language. The compensation of the board is increased from \$100 per month to \$250 per month. The district is authorized to acquire by purchase, gift, or condemnation real and personal property outside the district. The bill authorizes the district to:

- Construct and maintain roadways including roads, parkways, bridges, landscaping, irrigation, bicycle and jogging paths, street lighting, traffic signals, road striping, and all other customary elements of a modern road system;
- Establish facilities for providing transportation throughout the district, including private or contract carriers, buses, vehicles, railroads, and other transportation facilities, to meet the transportation requirements of the district activities;
- Provide public safety, including security, guardhouses, and patrol cars, when authorized by proper governmental agencies; except the district may not exercise any police power;
- Establish and create departments, committees, boards, or other agencies, including a public relations committee;
- Conduct mosquito control,
- Conduct fire control and emergency medical services with county approval;
- Construct and maintain school facilities which may be leased or sold to the school district when authorized by the district school board; and
- Enforce deed restrictions for defunct homeowners associations.

The bill is effective upon becoming a law.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

Spring Lake Improvement District (district) is an independent water control district located in Highlands County which was created in 1971 pursuant to ch. 71-669, L.O.F. The district consists of 3,359 acres and serves approximately 3,500 residents.

The district is governed by five member board of supervisors. Three supervisors are elected on a one-acre one-vote basis, two are popularly elected. Each supervisor receives \$100 month.

##### Powers of the District

The district has all powers of a water control district created pursuant to ch. 298, F.S., to construct, operate, and maintain water control systems within the district and to levy assessments and issue bonds to finance such water control systems. The district currently levies \$293 per acre, or if a parcel is smaller than an acre, \$293 per parcel. The district has an annual budget of \$1.935 million that funds all operations including drainage, mosquito control, parks, streetlights, and maintenance of road ways.

The district has the power:

- To contract and be contracted with; to sue and be sued; to adopt a seal; to acquire real or personal property.
- To adopt a water control plan.
- To provide for a district office and the storage and maintenance of the district's equipment.
- To drain and reclaim lands within the district.
- To regulate drainage requirements and set forth conditions to be met for plats to be recorded.
- To borrow money and issue bonds, certificates, warrants, notes, or other evidence of indebtedness of the district.
- To build improvements and to acquire equipment.
- To construct bridges, culverts, and roads.
- To hold easements, reservations, or dedications.

- To impose an ad valorem tax, a drainage tax, and a maintenance tax.
- To impose and foreclose special assessment liens.
- To regulate all structures and things which come into contact with or are a part of a district facility.
- To enforce the provisions herein by the promulgation of rules and regulations.
- To cooperate with other drainage districts or governmental agencies.
- To hire employees.
- To exercise all powers necessary.
- To construct, improve, and maintain roadways.
- To make use of public easements.
- To enter into leases.
- To regulate the supply of water within the district.
- To own and operate water and sewer systems.
- To own and operate parks and other recreational facilities.
- To issue bonds.
- To install and operate streetlights.
- To require underground utilities.
- To require district landowners to maintain their property.
- To exercise all powers conferred by ch. 298, F.S.

#### Enforcement of Deed Restrictions

Section 190.012(4), F.S., allows community development districts to enforce deed restrictions that govern the use and operation of real property and, for which there is no homeowners' association or property owner's association having respective enforcement powers unless, with respect to a homeowners' association whose board is under member control, the association and the district agree in writing to enforcement by the district. The CDD can adopt rules to enforce the deed restrictions only when all of the following conditions exist:

1. The district was in existence on the effective date of this subsection, or is located within a development that consists of multiple developments of regional impact and a Florida Quality Development.
2. For residential districts, the majority of the board has been elected by qualified electors pursuant to the provisions of s. 190.006, F.S.
3. For residential districts, less than 25 percent of residential units are in a homeowners' association.
4. The declarant in any applicable declarations of covenants and restrictions has provided the board with a written agreement that such rules may be adopted. A memorandum of the agreement shall be recorded in the public records.

#### **Effect of Proposed Changes**

The bill amends the charter of the district by removing repetitive language already contained in chs. 189 and 298, F.S. The elections provisions of the district's charter are clarified to reflect that there are two popularly elected Board members. The compensation of the Board is increased from \$100 per month to \$250 per month, provided such salary is approved by a super majority of the Board. The

district is authorized to acquire by purchase, gift, or condemnation real and personal property outside the district.<sup>1</sup>

### Powers of the District

The bill authorizes the district to:

- Construct and maintain roadways including roads, parkways, bridges, landscaping, irrigation, bicycle and jogging paths, street lighting, traffic signals, road striping, and all other customary elements of a modern road system;
- Establish facilities for providing transportation throughout the district, including private or contract carriers, buses, vehicles, railroads, and other transportation facilities, to meet the transportation requirements of the district activities;
- Provide public safety, including security, guardhouses, and patrol cars, when authorized by proper governmental agencies; except the district may not exercise any police power;
- Establish and create departments, committees, boards, or other agencies, including a public relations committee;
- Conduct mosquito control,
- Conduct fire control and emergency medical services with county approval; and
- Construct and maintain school facilities which may be leased or sold to the school district when authorized by the district school board.

The compensation of the property appraiser, tax collector, and clerk of the circuit court for services performed in connection with taxes and assessments shall be in accordance with general law.<sup>2</sup> The levies of non-ad valorem assessments on land less than one acre are assessed as one acre while those parcels over one acre shall be assessed at the nearest whole number of acres. All taxes and assessments of the district are levied, collected, and enforced in the same manner as county taxes.<sup>3</sup>

Pursuant to ch. 298, F.S., the act, and applicable general law, the district has the power to issue assessment bonds and revenue bonds, without limitation to amount, for financing those systems and facilities contained in section 3.<sup>4</sup>

The bill also requires that all purchases shall be made in compliance with the competitive bid or negotiation provisions of ss. 255.20 and 287.055, F.S., ch. 298, F.S., and applicable general law, and the policies of the district board of supervisors.

### Enforcement of Deed Restrictions

The bill authorizes the district to adopt rules necessary to enforce “deed restrictions” within the district. The term “deed restrictions” is defined to include covenants, conditions, restrictions, compliance mechanisms, and enforcement remedies contained in any applicable declarations of covenants and restrictions that govern the use and operation of real property within the district, and for which there is no homeowners’ association or property owner’s association having enforcement powers or an association having such enforcement powers has not held a meeting within the previous 12 months or

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<sup>1</sup> Section 298.22(7), F.S., provides that water control districts “may condemn or acquire, by purchase or grant, for the use of the district, any land or property within or without said district not acquired or condemned by the court as identified in the engineer’s report, and shall follow the procedure set out in chapter 73. Such powers to condemn or acquire any land or property within or without the district shall also be available for implementing requirements imposed on those districts subject to s. [373.4592.](#)”

<sup>2</sup> Section 43 of the charter.

<sup>3</sup> Id.

<sup>4</sup> The district’s current bonding authority is found in subsection 9 of section 2 and subsection 23 of section 10, and sections 22, 23, 24, 28, 29, 30, 31.

the the association and district agree in writing to enforcement by the district. The district may adopt rules pertaining to the deed restrictions that apply only to external appearances or uses and are deemed to be generally beneficial for the district's landowners; are consistent with a development order or regulatory agency permit, or are consistent with the district's water control plan.

**B. SECTION DIRECTORY:**

Section 1: Revises the powers of the district.

Section 2: Repeals various sections of the district's charter.

Section 3: Provides an effective date of upon becoming law.

**II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS**

A. NOTICE PUBLISHED? Yes  No

IF YES, WHEN? December 13, 2009.

WHERE? In *The News-Sun*, a tri-weekly newspaper published in Highlands County, Florida.

B. REFERENDUM(S) REQUIRED? Yes  No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached  No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached  No

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

**Constitutional Notice Requirement for Local Bills**

Section 10, Art. III of the State Constitution provides that "[n]o special law shall be passed unless notice of intention to seek enactment thereof has been published in the manner provided by general law."

Section 11.02, F.S., implements the constitutional notice requirement, and requires that such notice "...state the substance of the contemplated law as required by s. 10, Art III of the State Constitution." The advertisement provided with the bill states that the legislation will "codify, reenact, amend and repeal the district's special acts, incorporate chapter 298, Florida Statutes, provide for minimum charter requirements provide powers, provide for applicability of other laws, provide for severability, and provide an effective date."

The bill provides powers to the district which would allow: the district to conduct fire control and emergency medical services with county approval, construct and maintain school facilities which may be leased or sold to the school district when authorized by the district school board, and enforce deed restrictions for defunct homeowners associations for issues such as maintenance and upkeep of homes and landscaping for properties in foreclosure.

While a person whose interests may be affected by these additional powers may not have been made aware of these changes, “the constitution requires only that notice be given of the Subject of the proposed legislation, not that the Object of such legislation be defined in the notice.”<sup>5</sup>

**B. RULE-MAKING AUTHORITY:**

Yes, the district can adopt rules

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

**Drafting Issues**

Line 108 includes a period that results in an incomplete sentence.

Line 577 refers to “those systems and facilities provided for in section 3”. The correct reference is section 8.

**Other Comments**

The bill authorizes the district to enforce deed restrictions of defunct homeowners’ associations. While this provision is patterned after s. 190.012(4), F.S., cited above, that section does not authorize the enforcement of deed restrictions for defunct homeowners’ associations. Moreover, the district cannot satisfy two of those requirements: majority of the board has been elected by qualified electors; and less than 25 percent of residential units are in a homeowners’ association.

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

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<sup>5</sup> *North Ridge General Hospital, Inc. v. City of Oakland Park*, 374 So.2d 461, 463 (Fla. 1979).